

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:	)	Case No. 16-42529
	)	
PEABODY ENERGY CORPORATION, et al.,	)	Chapter 11
	)	
Debtor.	)	(Jointly Administered)
	)	Related to Docket Nos. 45 and 149

**LIMITED OBJECTION TO MOTION OF THE DEBTORS AND DEBTORS  
IN POSSESSION, PURSUANT TO SECTIONS 105, 361, 362, 363, 364,  
AND 507(b) AND BANKRUPTCY RULES 4001(b) AND (c), FOR INTERIM  
AND FINAL ORDERS (I) AUTHORIZING DEBTORS (A) TO OBTAIN  
POSTPETITION FINANCING AND (B) TO UTILIZE CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION TO PREPETITION  
SECURED PARTIES; AND (III) SCHEDULING A FINAL HEARING**

PLEASE TAKE NOTICE that Natural Resource Partners L.P., WPP LLC, and ACIN LLC (collectively, the “NRP Parties”), hereby submit this limited objection (the “Limited Objection”) to the Motion of the Debtors and Debtors in Possession Pursuant to Sections 105, 361, 362, 364, and 507 and Bankruptcy Rules 4001(b) and (c), for Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing (docket item 45) (the “DIP Motion”) and to the Amended Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Pre-petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b) and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (docket item 149) (the “Interim Order”). In support of their Limited Objection to the Motion and Interim Order, the NRP Parties state the following:

### **BACKGROUND**

1. On April 13, 2016 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Missouri, Eastern Division (the “Court”).

2. The Debtors continue to operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The NRP Parties have entered into several lease agreements with certain of the Debtors (the “Leases”).

4. On April 13, 2016, the Debtors filed the Motion, in which they seek approval, in relevant part, of: (a) the proposed terms of post-petition financing; (b) the imposition of liens in favor of lenders; (c) the extension of certain adequate protection measures; (d) a request to pledge Collateral;<sup>1</sup> (e) the imposition of liens on the Debtors’ leasehold properties interests; and (f) a proposed final order and final hearing date.

5. On April 15, 2016, this Court entered the Interim Order granting the Motion on a limited, interim basis and scheduled a final hearing on the Motion for May 17, 2016 at 10:00 a.m. (prevailing central time).

### **LIMITED OBJECTION**

#### **A. Rights and Obligations Due to the NRP Parties Under Section 365 of the Bankruptcy Code.**

6. The NRP Parties do not oppose generally the relief requested by the Debtors in the Motion. However, to the extent the Motion seeks to alter or relieve the Debtors or any interested parties of the obligations imposed by Section 365 of the Bankruptcy Code and to the

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion, the Interim Order, or the DIP Agreement (defined below).

extent the Motion seeks to eliminate or alter any of the NRP Parties' rights available under Section 365 of the Bankruptcy Code, the NRP Parties object to the Motion.

**B. Collateral and Excluded Assets, each as Defined in the Proposed Borrowing.**

7. The Motion indicates that "Collateral" is defined in the Superpriority Secured Debtor-In-Possession Credit Agreement dated as of April 13, 2016 (the "DIP Agreement") in the following manner:

"Collateral" means all owned or hereafter acquired assets and property of the DIP Loan Parties (including, without limitation, inventory, accounts receivable (if any), real property, plant, equipment, rights under leases and other contracts, patents, copyrights, trademarks, tradenames and other intellectual property and capital stock of subsidiaries), and the proceeds thereof, subject to customary exceptions to be agreed but to include without limitation, for the avoidance of doubt, all cash and cash equivalents of the DIP Loan Parties and any intercompany loans held by the DIP Loan Parties, subject, in the case of liens on the equity interests of P&L Receivables Company, LLC and any intercompany notes issued in connection with the A/R Facility Amendment, to intercreditor arrangements with the A/R Agent. Notwithstanding the foregoing, all "Receivables Assets" (as defined in the Pre-Petition Credit Agreement) sold or otherwise transferred to P&L Receivables Company, LLC in connection with the A/R Facility Agreement shall not constitute Collateral; *provided* [emphasis in original] that any such assets that are reconveyed to the DIP Loan Parties pursuant to the terms of the documentation governing the A/R Facility shall become Collateral.

Motion, p. 20 (citing section 1.01 of the DIP Agreement) (emphasis added).

8. The DIP Agreement actually defines the term "Collateral" as follows:

"Collateral" means all of the "Collateral" as defined in any Security Document or in the Interim Order or the Final Order (including all Real Property of any Borrower or other Loan Party) and all of the other property that is or becomes subject to Liens in favor of the Administrative Agent for the Secured Parties under the Loan Documents, the Interim Order or the Final Order; provided that Collateral shall exclude any Excluded Assets.

DIP Agreement, p. 8.

9. The Interim Order defines "Collateral," in relevant part, as follows:

As security for the DIP Obligations, effective and perfected upon the date of entry of this Interim Order and without the necessity of the execution, recordation of filings by the Debtor Loan Parties of mortgages, security agreements, control agreements,

pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses 8(a), 8(b), 8(c), and 8(d) below being collectively referred to as the "Collateral"). . . .

[(8)](a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and post-petition property of the Debtor Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, "Unencumbered Property"), including, without limitation, any and all unencumbered cash of the Debtor Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, postpetition intercompany claims against the Debtor Loan Parties and their non-Debtor affiliates), contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements, other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents, and profits of all the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, in each case other than (i) the Excluded Assets, but including any proceeds of Excluded Assets and (ii) Avoidance Actions, but, subject only to and effective upon entry of the Final Order, including any Avoidance Proceeds;

[(8)](b) Liens Priming Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of Loan Parties (provided that with respect to the property of Peabody Holdings (Gibraltar) Limited, "Collateral" shall only include 65% of the equity interests in non-Debtor Peabody Investments (Gibraltar) Limited) (including, without limitation, any and all cash and cash collateral of the Debtor Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, postpetition intercompany claims against the Debtor Loan Parties and their non-Debtor affiliates), contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements, other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents, and profits of all the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, in each case other than (i) the Excluded Assets, but including any proceeds of Excluded Assets and (ii) the Avoidance Actions, but, subject only to and effective upon entry of the Final Order, including any Avoidance Proceeds, whether

now existing or hereafter acquired, that is subject to the existing liens presently securing the Stipulated Debt (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Secured Parties arising from current and future liens of the Pre-Petition Secured Parties (including, without limitation, the Adequate Protection Liens) (collectively, the “Primed Liens”) and to any liens and security interests to which such Primed Liens are senior or pari passu;

[(8)](c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtor Loan Parties, including, without limitation, any and all cash and cash collateral of the Debtor Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, post-petition intercompany claims against the Debtor Loan Parties and their non-Debtor affiliates), contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements, other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents, and profits of all the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, in each case other than (i) the Excluded Assets, but including any proceeds of Excluded Assets and (ii) the Avoidance Actions, but, subject only to and effective upon entry of the Final Order, including any Avoidance Proceeds, that is subject to valid, perfected and unavoidable liens permitted under the Existing Secured Agreements to the extent such permitted liens are senior to the Pre-Petition Lender Security Interests and were in existence immediately prior to the Petition Date (other than, for the avoidance of doubt, the Primed Liens), or to any such valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code . . .

Interim Order, pp. 26-29 (emphasis added).

10. The DIP Agreement defines the term “Excluded Assets” as follows:

any assets to the extent that and for so long as the grant of a security interest therein would be prohibited by, cause a default under, result in a breach of or otherwise violate applicable law or any organizational documents or any contractual or lease provisions or give another party any rights or termination or acceleration or any rights to obtain a Lien to secure obligations owing to such party (excluding, in all cases, any such restrictions contained in any Existing Debt Documents or in the Intercompany Credit Agreement on Global Center’s ability to grant security over its rights thereunder in favor of the Lenders (or in either case any security agreement or other agreement related thereto)); provided that this clause (i) will not apply to restrictions overridden or rendered unenforceable by the Bankruptcy Code or the

UCC anti-assignment provisions or by other applicable law or as a result of the Cases or, to the extent this clause was (a) applicable because the grant of a security interest would violate applicable law, if there is a change of law that would result in a grant of a security interest no longer violating applicable law; provide, further, that upon the removal of all restrictions specified in this clause (a) shall no longer apply.

DIP Agreement, p.14. The Interim Order relies upon the definition of Excluded Assets “as such term is defined in the Existing Credit Documents” which documents do not appear to be included in any of the Debtors’ filings with the Bankruptcy Court. *Id.* at p. 10. The Motion does not use or define the term Excluded Assets.

11. Notwithstanding the Debtors’ multiple definitions of “Collateral” and the lack of clarity related to the definition of “Excluded Assets,” the NRP Parties assert that their Leases with the Debtors should not be treated as Collateral for purposes of the instant Motion or otherwise, as the Leases contain anti-assignment/anti-lien provisions, which qualify the Leases as Excluded Assets based on the definition recited above.

**C. Reservation of Rights Related to the Proposed Lien on the Proceeds of Leases in Favor of Lenders.**

12. Finally, the Motion and Interim Order suggest that liens in favor of the lenders will attach to payments due to the NRP Parties under Section 365(d)(3) of the Bankruptcy Code as well as to cure payments that may become due to the NRP Parties pursuant to the Leases and under Section 365(b)(1)(A) of the Bankruptcy Code. The NRP Parties request that the Final Order granting the Motion makes clear that liens in favor of the lenders will not attach to any payments due to the NRP Parties under Section 365(d)(3) of the Bankruptcy Code or to any cure payments that may become due to the NRP Parties pursuant to the Leases and Section 365(b)(1)(A) of the Bankruptcy Code.



**RESERVATION OF RIGHTS**

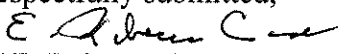
13. Nothing in this Limited Objection is intended to be, or should be construed as, a waiver by the NRP Parties of any of their rights under the Leases, the Bankruptcy Code, or applicable law.

**JOINDER**

14. The NRP Parties hereby join in any objections to the Motion filed by other lessors, as if restated in full herein, to the extent that they are not inconsistent with this Limited Objection.

WHEREFORE, the NRP Parties respectfully request that this Court (a) sustain this Limited Objection for the reasons set forth above, and (b) grant such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: May 3, 2016

Respectfully submitted,  
  
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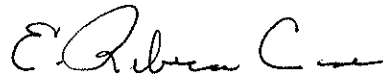
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2016, a true and correct copy of the foregoing pleading was served on all parties receiving electronic notice in this case via the CM/ECF system for the United States Bankruptcy Court for the Eastern District of Missouri and were served on the Master Service List by email or as otherwise indicated on the list attached as **EXHIBIT A**, in accordance with the Order Establishing Case Management and Administrative Procedures (ECF #114).



/s/ E. Rebecca Case

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